HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

WP. No. 6348/01 (S/S)

Mohad Hussain

Vs

State of U.P. and others.

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 22.08.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 6348 (SS) OF 2001

(Old No. 17364 of 2000)

Mohd. Hussain,
S/o Sri Mohd. Saddiq,
R/o Village and Post Dhakrani,
District – Dehradun. .....Petitioner.

Versus

1. State of U.P. through its Secretary, Uddyan Evam Khadya Prasanskaran Vibhag, U.P. (Hill), Civil Secretariat, Lucknow.
2. The Director Uddyan Evam Khadya Prasanskaran Vibhag U.P. (Parvatiya), Chaubatiya, Ranikhet, District – Almora.
3. District Uddyan Adhikari, Dehradun.
4. District Uddyan Adhikari, Chamoli.
5. Patatao Development Officer, Joshimath, District Chamoli. .....Respondents.

Dated: 22.08.2006

Hon'ble Rajesh Tandon, J.

Heard Sri S.S. Yadav, Advocate for the petitioner and Standing Counsel for the respondents no. 1 to 5.

2. By the present writ petition, petitioner has prayed for a writ of certiorari quashing the order dated 01.03.2000 passed by the respondent no. 3 as contained in (Annexure–6) to this writ petition. Further prayer has been made for a writ of mandamus commanding the respondents not to interfere in

the working of the petitioner as gardener Rajkiya Uddyan, Patauli, District – Chamoli. Further mandamus has been prayed commanding the respondents to make the payment of salary regularly as and when it becomes due.

3. Briefly stated, in pursuance of the interview letter, the petitioner appeared before the selection Committee and selection committee after going through the academic qualification found the petitioner fit for the post of gardener and the selection committee issued appointment letter to the petitioner on 5th September, 1998 (Annexure No. 2 to the writ petition). Pursuant to the appointment letter, the petitioner joined his services on 15th September, 1998 at Chausal Uddyan Sachal Dal Kendre, Dehradun and started functioning as a gardener.

4. Since the post of gardener was abolished in Garhwal Mandal inw hich the petitioner' district fell, a decision was taken by the respondents to absorb the petitioner another mandal and in pursuance to that the petitioner was absorbed on the post of gardener in District Chamoli in Rajkiya Uddyan Patauli on 6th October, 1999.

5. In pursuance of the order dated 6th October, 1999, a letter was issued by the District Uddyan Officer, Dehradun onj 28.10.1999 whereby the petitioner was required to give joining report at the place where he has been transferred/absorbed.

6. Petitioner has submitted that he has already undergone the training for one year 1996-1997 as gardener.

7. In pursuance of the above, the petitioner joined his services in Rajkiya Uddyan Patauli as a gardener on 2nd November, 1999 and according to the petitioner, he started working with utmost satisfaction to the higher officer.

8. On 01.03.2000, an order was passed by the respondent no. 3, whereby the service of the petitioner was terminated. Petitioner has filed the writ petition. In a similar Writ Petition No. 6350 of 2001, following order was passed on 10.04.2000:-

> *"Heard learned counsel for the petitioner and learned Standing Counsel appearing for the respondents.*
>
> *Learned Standing Counsel is allowed two months time to file counter affidavit.*
>
> *List thereafter.*
>
> *Petitioner was temporarily appointed as Mali by order dated 24th March, 1998 issued by the District Horticulture Officer, Dehradun. By order dated 27.7.99 the State Government issued notification abolishing 45 posts of Malis and in pursuance of the letter dated 25.8.99 the employees were absolved at other places. The petitioner was absolved at Government Garden, Bharsar, Distt. Pauri Garhwal. In pursuance of this order, the Dy. Director of Horticulture, the petitioner joined on 1st November, 1999 in district Pauri Garhwal and worked there. By the impugned order dated 1st March, 2000, the services of the petitioner have been terminated by the District Horticulture Officer, Dehradun whereas the petitioner was working in District Pauri Garhwal and as he was absolved in District– Pauri Garhwal, therefore, Prima facie the order*

passed by the District Horticulture Officer, the petitioner is entitled for interim order.

Until further orders of this court, the effect and operation of the termination order dated 1st March, 2000 passed by the District Horticulture Officer, Dehradun terminating the services of the petitioner shall remain stayed. The petitioner shall be continued in service and paid the salary."

9. A counter affidavit has been filed in the present writ petition, where it has not been denied that the appointment was made after the recommendation of the selection committee. However, it has been stated that the appointment was purely temporary in nature.

10. It is settled law that every order has to be passed after giving reasons and it is also a settled law that the reasons are link between the application of mind and the order passed thereon.

11. In ***State of Orissa Vs. Dhaniram Luhar (2004) 5 SCC Page 568,*** it has been held by the Apex Court as under:-

"8. Even in respect of administrative orders Lord Denning, M.R. in Breen v. Amalgamated Engg. Union (1971) I All ER 1148 observed : "The giving of reason is one of the fundamentals of good administration." In Alexander Machinery (Dubley) Ltd. v. Crabtree 1974 JCR 120 (NIRC) it was observed : " Failure to give reasons amounts to denial of justice." "Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at." Reason substitute subjectivity by

objectivity. The emphasis on recording reason is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial are view in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirement of natural justice is spelling out reasons for the order made; in other words, a speaking-our. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."

12. In view of the above, a writ of certiorari is issued quashing the order-dated 01.03.2000 passed by the respondent no. 3. Liberty is given to the respondent no. 3 to pass a fresh order if circumstance so arises giving opportunity of hearing to the petitioner.

13. Consequently, subject to the above, the writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

22.08.2006
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